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NEW BRUNSWICK NJ 08933-7003

In re Application of	:	
Zalenski, et al.	:	
Application No. 10/750,173	:	ON APPLICATION FOR
Filed: December 31, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 101896-719 (DEP-5165)	:	
	:	

This is in response to the "Application for Patent Term Adjustment Pursuant to 37 CFR 1.705(b)", filed August 15, 2011. Applicants submits that the patent term adjustment to be indicated on the patent is one thousand, four hundred and twenty-seven (1,427) days, not one thousand, eight hundred sixteen (1,816) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The request for reconsideration of patent term adjustment is DISMISSED.

On May 16, 2011, a "Determination of Patent Term Adjustment under 35 U.S.C. 154(b)" was mailed indicating that the initial patent term adjustment is 1,816 days. The instant petition under 37 CFR 1.705(b) was filed on August 15, 2011—on the same day that issue fee was paid. Petitioner asserts that the initial patent term adjustment is 1,427 days and states, in pertinent part:

(ii) Applicant believes that 389 of the PTA days calculated by the PTO actually overlap the 1305 days awarded to the application for a successful appeal, and therefore, the PTA should be reduced by the 389 days;

Excerpt taken from "Application for Patent Term Adjustment Pursuant to 37 CFR 1.705(b)", filed August 15, 2011, p. 2.

A review of the file history reveals that a period of adjustment of 39 days to the patent term was entered pursuant 37 CFR

Applicant's argument has been considered and is persuasive to the extent that the a period of "A" delay and the period of "C" delay appear to overlap 389 days. However, any period of overlap of the "A" delay and the "B" delay and/or the "A" delay and the "C" delay is determined at the time the patent issues and made a part of the revised determination of patent term adjustment. It is further noted that the reducing the patent term adjustment for the instant overlap consideration prior to the issuance of the patent would be premature and likely result in a duplicate reduction at the time the patent issues. As such, it is concluded that reduction of the patent term to account for the overlap of "A" and "C" delay periods is properly deferred until the patent issues.

It is noted that applicant has not presented any other issue that would be properly treated under 37 CFR 1.705(b).

In view thereof, the petition is DISMISSED.

The petition fee of \$200.00 fee set forth in 37 CFR 1.18(e) will be charged to deposit account 14-1449. No additional fees are required.

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded¹).

The application file is being forwarded to the Office of Data Management for issuance of the patent.

¹ See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR ' 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004).

Telephone inquiries regarding this matter should be directed to the undersigned, at (571) 272-3222.

/Kenya A. McLaughlin/

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